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HISTORY.

Historia vero testis temporum, lux veritatis, vita memoriæ, magistra vitæ, nuntia vetustatis, qua voce alia, nisi Oratoris, immortalitati commendatur. CICERO DE ORATORE.

CHAPTER XX.

The inconsistency and capriciousness displayed in the conduct of the mother country, to the colonies, must appear perfectly irreconcilable to common reasoning, in the eyes of those who consider the counsels of that cabinet as uniformly those of one mind. To unravel the causes of that inconsistency and capriciousness, and of that strange complication of absurdities, errors and consequent perplexities, it is necessary to keep in view the distinct nature, principles and opinions of the different men who either directed the cabinet at the time, or contested for the rule of the state. The cabinet of Carleton House which firmly adhered to its original plan of taxing America, was, as has been stated, by the pressure of public exigencies, by the danger which attended the stamp act, and by the spirit and indignation avowed and acted upon by the colonists, compelled to yield up that measure, aban-

don the minister who proposed it, and to wait for a more favourable time, and contrive a more delusive form in which to introduce it—they therefore admitted for a short time into the ostensible administration, a set of men (the Rockingham party,) in all respects unlike themselves, and hostile to their views, who were permitted to do only just so much as produced a treacherous calm, without dissipating, as ought to have been done, the materials of a future storm. On the other hand Mr. PITT remained firm to his opinion that England had no right to lay a tax upon the colonies, condemned altogether and in the most unqualified manner, all the measures of the Grenville administration, and declared that though he acknowledged the Rockingham party to be composed of men of fair character, and such as he was happy to see engaged in the cabinet, he would not give them his confidence. Their annexing a declaration of the right of Britain to tax America to the repeal of the stamp act increased his distrust and excited his dislike. But those who, with him, may be disposed to blame that measure, will no doubt allow some praise to those ministers for having effected even so much as the repeal qualified as it was by that declaration, when they consider that the repeal was, in the House of Peers, avowed by Lord BUTE, and afterwards by Lord STRANGE, a court minion—to be highly disapproved by the king, in direct contradiction to lord ROCKINGHAM'S assertion, that his majesty's approbation of it was clear and unequivocal. In this one simple affair which stands upon too broad a basis of authenticity to be doubted, there is a sufficient proof of the undue influence of the junto over the king's mind. Lord ROCKINGHAM, justly indignant, and nicely regardful of his honour, requested the king to give him his opinion upon the repeal in writing. His majesty declined it—and that refusal, as it served to shew the marquis and his friends that they never possessed the confidence of the king, will be a commemoration to all posterity who the persons and counsellors were, to whom the abruption

of the colonies from the mother country, and all its consequences are to be attributed. The innumerable creatures of the junto, court favourites, court dependants and court runners, both in parliament and out of it, were employed incessantly in uttering invectives against the repeal, and in rendering its authors unpopular. And to their efforts, then and since industriously continued by their successors in those stations, is to be attributed every seed of that dislike and censure which has attached to the whig party in England for its conduct in the case of America.

The removal of the Rockingham party made way for that administration, by which the mischievous determination of the court to tax the colonies was again revived and reduced to practice; and it must create astonishment, in looking to the latter, to find among them the name of WILLIAM PITT—that very WILLIAM PITT who so strenuously denied that Britain possessed the right of taxation in America. The too great facility of the Rockingham party in taking the administration of affairs on the offer of the court, without the aid of Mr. PITT—and the subsequent pride and resentment which made the latter insist upon a monopoly of power, to the exclusion of the other whigs, produced all the effects which the junto could desire, at once increasing their power and gratifying their malice. Meantime the hostile sense of the country to the court was loudly proclaimed by the numerous addresses expressive of gratitude, admiration and respect, which were presented to the marquis of ROCKINGHAM, and which shewed the ascendancy of whig principles in England, and the dislike of the that people to the measures of the junto. The conduct of Mr. PITT in demanding for himself the nomination of all the cabinet ministers, evidently to the exclusion of the marquis and his party, bore the aspect of a monopolizing ambition; and his taking a peerage, with the office of lord privy seal, in the new administration, cut him off at once from that more distinguished elevation of THE GREAT COMMONER, which he had long held, and deprived him of his popularity. Instead of

the love of the people, he had now their anger—instead of confidence, suspicions of an abandonment of his principles—and the designs of the Carlton House junto upon him, were to the utmost accomplished. Neither the nation, nor any individual in it, ever suspected him of becoming a creature of the court, but some looked upon him as reconciled to its abominable system. Yet even in this they were mistaken, having never reflected that the efficient offices of government were still filled by whigs, who wanted nothing but cohesion and fidelity to one principle of conduct to maintain their ground. Mr. PITT, now created lord CHATHAM, soon perceived the greatness of his fall, and retired to Bath, where the gout and other bodily infirmities conspired with indignation and regret to overthrow his spirits and shatter his nerves. During the absence of that great man his fellow ministers looking upon him as irrevocably fallen and incapacitated, intrigued against him and formed that arrangement in which Mr. CHARLES TOWNSHEND was included, and under which the project of taxing America was revived.

It is with a view of doing justice to the illustrious character of whom mention is now made, that this account of the parties has been entered into. He had no privity with the wild and wicked schemes of the cabinet; he was not even consulted during his illness upon any measure; and when his capacity for business was restored, his opinions were disregarded, he himself was treated with disrespect, and he found too late, that he had lost the love of the people without gaining, if he were desirous of it, the confidence of the court. This led to a complete public developement of his opinions, respecting the Carlton House junto. Speaking in the house of peers on the 2d of March, 1770, he informed their lordships of the abominable secret influence of a hidden person. "A favourite, said he, whose pernicious counsels have occasioned all the present unhappiness in the nation, who has ruined every plan for the public good, and betrayed every man who has taken a responsible office. There is no safety—no security

against his power and malignity.—I own it—to my sorrow I confess it, I myself have been duped, at a time when I had least apparent cause for suspecting him of treachery—when prospects were fair, and confidence appeared to me to be most strong, and when I had with great pains, attention and deliberation, formed schemes highly interesting and important to this country. These schemes, my lords, which I proposed in council were by the council approved, and assented to by the king; but on my return from a short, and to my health, necessary absence at Bath, I found my plans all dismissed and vanished into air, into thin air. I must in justice say, that in the closet, I have invariably found every thing gracious and amiable—I have even received solemn promises of support. I own I was credulous, I was duped, I was deceived. I soon found that no original administration is to be suffered in this country. A long train of wily and insidious practices have at length greatly against my will convinced me that there is SOMETHING BEHIND THE THRONE GREATER THAN THE THRONE ITSELF."

To return to America—as it was now evident that the pretensions of the British parliament to tax America, were not only not abandoned, but on the contrary revived and acted upon, the American press teemed with writings to shew the unconstitutionality of the act, and to rouse the people to opposition. It was in vain that the few who from attachment to the mother country, from zeal for the royal and parliamentary authorities, from pacific tempers or timidity, or from a scrupulous averseness to creating dissentions, argued with the Colonists, and urged the smallness of the tax, they were instantly and conclusively answered by a reference to the principle—To that very principle, the maintenance of which, one hundred and thirty three years before, had led to a regicidal revolution in England itself. The writers who opposed the tax, reminded the Colonists that the amount of the ship-money tax in the reign of CHARLES Ist. was very small when compared with the wealth and population of England—as it

little exceeded two hundred thousand pounds. That it was levied upon the people with equality. That the money to be drawn from it was expended on the navy, to the great honour and advantage of the kingdom: Because as England had no military force, while all the other powers of Europe were strongly armed, a fleet seemed absolutely necessary for her security; and it was therefore obvious that a navy must be built and equipped at leisure, during peace, nor could it possibly be fitted out on a sudden emergence, when the danger became urgent. Yet all these considerations could not reconcile the people to the imposition, because IT WAS ENTIRELY ARBITRARY, AND BY THE SAME RIGHT ANY OTHER TAX MIGHT BE IMPOSED."* This was the ground taken by the Colonists, who considered Mr. TOWNSHEND'S new tax act as the first made trench of a deliberate attack upon their freedom, meditated by the government of England. And unquestionably they were in this reasoning right, since a principle is as completely violated by a small as by a large breach, and a precedent on the subject matter of five pound is as potent authority as one on that of five millions; while the smallness of the benefit to be derived from the attempt, must have enlivened suspicion, and induced the Americans to conclude that it could have been intended for no other purpose but to try an experiment on the one hand, and on the other to establish a record, by which the acquiescence of the Colonies to that particular tax, should forever after be construed into an acquiescence with the principle, and into a general consent to subsequent taxation. The writers of the day insisted that the very same offensive principle pervaded these taxes which had before excited opposition to the stamp act, and given to their resistance to it, that spirit which occasioned its repeal—Nay, these, they said, were still worse, inasmuch as the stamp duties might be evaded by the disuse of an article, which might with little inconvenience be dispensed with, while those on which the new duties were laid, though

* Hume's England, c. 52.

they might be disused, were almost essentially necessary to the comforts of life. Among the essays published upon this occasion, those by a Mr. DICKENSON of Pennsylvania, with the signature of "A Farmer" stood conspicuous for force of reasoning and patriotic spirit. The labours of those writers gradually produced the desired effect, and an abhorrence of the new duties was not less general or violent, than that which had before so successfully operated against the stamp act. The animadversions of the press upon this fresh attack naturally led the public back to a discussion of the declaratory act, which though pretty generally overlooked before, was now plainly seen to contain within it the seeds of every species of oppression. The popular opinions of America were soon embraced by a very considerable portion of the people of England; who began now to feel the truth of the GREAT COMMONER'S assertions.—"I rejoice (said that august personage) that America has resisted—three millions of people so dead to all the feelings of liberty, as voluntarily to submit to be slaves, would have been fit instruments to makes slaves of all the rest. I know the valour of your troops, I know the skill of your officers, I know the force of this country; but in such a cause, your success would be hazardous. America, if she were to fall, would fall like the strong man; she would embrace the pillars of the state, and pull down the constitution with her."

The first Colonial legislative body which took up the matter in opposition, was that of Massachusetts. In the session of 1768—9, they discussed the acts of the British parliament which had been received during the previous recess—the creation of an American board of commissioners for superintending the revenues to be ordained by parliament, was considered as irresistible evidence that a system of taxation was intended to be established, which could only be got rid of by a resolute opposition *in limine*. As this board was therefore considered a main instrument for their subjugation, it is no wonder that the persons who composed it became obnoxious to

public dislike, and received many insults from the capricious anger of a multitude acting under violent exasperation. The result of the Massachusetts discussions was a determination to oppose the newly enacted duties with all their might. They directed letters, signed by their speaker, to their agent in London, and to general CONWAY, the marquis of ROCKINGHAM, the earl of CHATHAM, lord SHELBURNE, lord CAMDEN, and the lords of the treasury, in which they delineated in a masterly style, and with irresistible force of argument, the injurious tendency of the newly revived system of taxation. As those letters led to the most serious and important consequences, as they are highly descriptive of the temper and intentions of the Colonists, and as they contain the substantial merits of the great cause between the old country and the new, it would be unpardonable to omit particularising the purport of them, in any history professing to do justice to the parties. In them they deprecated the imputation of acting under the influence of a peevish or discontented habit, or of the least want of veneration for that august body, the parliament of England, whose supreme legislative power over the empire they thereby recognized, and whose superintending authority, in all cases consistent with the fundamental rules of the constitution, was, they said, as clearly admitted in the province of Massachusetts, as by any in the realm; and they presumed that the subjects in every part of the empire, however remote, had a claim to the advantages of that constitution. The spirit of the law of nature and nations, they said, declared so; for it was unreasonable to affirm that local or any other circumstances could justly deprive any portion of the subjects of a great prince of the full enjoyment of the rights of that constitution, upon which the government itself was founded, and by which sovereignty and allegiance were ascertained and limited. That as the legislative power derived its authority from the constitution, it could not change the constitution without destroying its own foundation. If then the constitution of Great Britain is the

common right of all British subjects, they humbly referred to inpartial judgment, whether the supreme legislative of the empire might rightly leap the bounds of it in the exercise of power over the subjects in America, any more than over those in Britain." They maintained it to be essentially a right that a man should quietly enjoy and have the disposal of his own property, and that no necessity could render it just or equitable in the nature of things, that the supreme legislative of the empire should impose duties, talliages and taxes, internal or external, for the sole purpose of raising a revenue upon subjects that were not, and considering their local circumstances, could not by any possibility be equally represented; and whose consent, therefore, could not be had in parliament. They observed that the great end of government was the security of rights and property; that measures which tended to render life and property precarious, tended to destroy them: that a colonist could not be conceived to have any property which he might call his own, if it might be granted away by any other body without his consent; and that this was in fact done when the act was passed for granting duties on paper, glass, and other articles, for the sole purpose of raising a revenue in America.

Every reflecting Briton who considered these sentiments and expressions of his fellow subjects of America with candor, must have pronounced them to be correct, and founded in unalterable truth; and ought to have felt, that while they breathed the true old British ardent spirit of freedom, and were grounded in the soundest constitutional principles, they were temperate, loyal and respectful. There is not a mechanic or farmer in England, who would not at this day hold the same principle upon a twopenny turnpike imposition. But there were some, and those too persons who had the supreme power under their influence, who thought otherwise of the matter, and felt that it was presumptuous and unjust, because it was not the language of Englishmen. Cogent as the reasonings were therefore, they had no effect upon the rulers of

empire, in whose hands the decision upon them lay; and the rights of three millions of loyal subjects were cast out of consideration when opposed to the exercise of the authority of government, while the rights of a miserable borough, at home, whose inhabitants might be packed in a small country church, would have been vindicated, at the expence of general civil commotion, if indeed government would dare to enter upon the hazardous enterprize of violating them. The seselfish, arbitrary feelings—this lust of unqualified domination, so natural to the human heart, when it has once seated itself in the bosom, and fortified its post with sophistry and false reasoning, produce an infatuation, blindness, and restlessness, which seldom fail to bring their victims to defeat and ultimate ruin. Nothing is seen by them in its true aspect—every thing is distorted and discoloured—the most manifest truth is hidden among a multitude of chimerical imaginations and vain hopes, generated by pride upon improbity. This was the case in an eminent degree with the British ministers of the period to which this history is now adverting. Though justice, the constitutional rights of their fellow subjects, the liberties and property of their countrymen, and the unity and prosperity of the empire in all its parts had no sway with them, still they might have seen in the very terms of those colonial representations, enough to assure them of the mischief and danger of the experiment they were making. They might easily have perceived not only the firm tone of an unalterable purpose, but the consciousness of a just and glorious cause. They might have discerned in them symptoms not to be mistaken, of principles deeply rooted, and inflexible determination arising from them. They might have seen that a successful issue to their plans was worse than doubtful, and they ought to have known that success itself would be purchased at too high a peril if obtained by such a dreadful convulsion of the empire, as must attend a struggle with a portion of it so numerous, so sagacious, so

resolute, and so trained and well versed in the discussion of political rights, and so tenaciously attached to freedom.

But this was not all, a petition was agreed on to the king and parliament, and a circular letter was addressed to the assemblies of the other provinces informing them of their proceedings. This had all the effect which it was intended it should have. The measures pursued by the legislature of Massachusetts, were heartily approved and the opposition they made to the taxes concurred in by those of the others, who in imitation of their great leader, Massachusetts, petitioned the king and parliament, and instructed their agents in England to endeavour to obtain a repeal of them. These strenuous and bold manifestations of their intention, were at the same time accompanied with expressions of respect, duty and loyalty, correspondent to the magnitude, the dignity and the awful importance of the subject. In fact it is evident from the whole tenor of their conduct, resolves and writings, that at that time they did not aspire to be independent of the mother country, but on the contrary earnestly wished to promote and contribute a just share to its prosperity—that so far as the enacting of laws for preserving their dependence upon Britain, and for regulating the trade of the colonies, they recognised and implicitly avowed their willing submission to the authority of the British parliament—though of their constitutional rights and franchises, they were determined not to yield an atom.

The British cabinet whose intemperate love of power nothing could abate, and whose pride nothing but unconditional submission could satisfy, were highly offended at the conduct of the colonists, and resented the letter of the Massachusetts assembly with great acrimony. They had fondly flattered themselves that their real design would be overlooked and passed over as a mere commercial regulation; their disappointment therefore was aggravated by detection; and, as is generally the case on all such occasions, their resentment was exactly proportioned to the cause which they were conscious they had to be ashamed. In this te m-

per of mind, they lost no time in betraying their exasperation, and took a step the most foolish, rash and impolitic that can be well imagined. The secretary of state for the American department, a man whose virtues and talents were exactly of the quality and dimensions fitted to associate with such a set of men as composed the cabinet of the time (lord HILLSBOROUGH) wrote a circular letter to the governors of the provinces, to be by them laid before their respective assemblies, inveighing against the circular letter of Massachusetts, as factious, dangerous, and tending to excite in the people a spirit of opposition to government, to urge them to a denial of the authority of parliament, and to a subversion of the constitution. In the course of it he invited the assemblies of the provinces in general to treat with proper resentment all such attempts and to avoid taking part with Massachusetts, by approving such proceedings; and at the same time demanded of the assembly of Massachusetts, to rescind its proceedings. Had not the conduct of the ministers in other things, been such as stood a pledge for their incapacity, it would be impossible to resist the inference that they devised this letter for the special purpose of irritating the colonies, and either throwing an inseparable bar in the way of accommodation, or of subjecting government to the degradation of shrinking from arrogant blustering into mean concession. The act of which they complained had been irretrievably done, and rescinding the resolution in consequence of which it was done could not prevent, nor ever mitigate its effects. As an act of seeming penitential expiation it might soothe the pride and satiate the resentment of the ministers, but it could not strike the fact out of existence, nor in the smallest degree obviate the evils which were apprehended from it. Within their appropriated spheres of action, each of the colonial assemblies were as free and independent as the parliament of Great Britain was in its more large and comprehensive one. A part of their rights guaranteed to them by the constitution, was that (what privilege is so dear to English-

men ?) of convening and communicating together, for the purpose of obtaining by legal means, redress of grievances. "A flagitious attempt to disturb the public peace," and such was the language of lord HILLSBOROUGH, was an epithet infinitely more appropriate to his lordship's circular letter than to that of the Massachusetts assembly to which he applied it; and so the event proved it to be.—Yet this appears humble, when compared with the menace it contained, of dissolving that assembly in case of non-compliance. A menace no less foolish, rash, and unjust in the conception, than inflammatory and ruinous in its consequences. A proposition to rescind their resolution was made in the assembly, and backed with all the power and influence of the executive and of the ministers friends, but was negatived by a majority, in the proportion of five to one. The consequence was, that the secretary's threat was immediately carried into execution, and the assembly was dissolved. The people of America now saw, that it was the determination of the cabinet to cut off all intercourse between them and the throne, by taking away its customary, legal and constitutional organ.

While the public mind was in this state of irritation, an incident occurred, which inflamed it to an excessive degree of exasperation, and which serves to shew what great consequences may be produced by causes seemingly trivial and disproportioned. A gentleman of high respect in Boston, had a sloop laden with wines from Madeira. It appearing that all the wines on board, had not been entered at the custom house, she was seized, and removed from the wharf at which she was laid. The people found in this transaction motives for resentment. The removal of the sloop was interpreted by them into a suspicion of their having a design to rescue it, Mr. HANCOCK being extremely popular. And strange as it may appear, the very name of the sloop contributed to fan the flame—she was called "the Liberty." All those circumstances trivial as they were, coupled with the popular hatred to the board of commissioners, roused the fury of the

people—they interrupted as far as they could, the officers in the execution of their duty—and vowed revenge. The king's collector, comptroller and inspector were assaulted in a manner to endanger their lives, while acts of violence and destruction were committed on the windows of their houses, and a pleasure boat belonging to the collector was burned. Matters at last became so serious that the commissioners were obliged to take refuge on board a king's ship lying in the harbour, and thence at Castle William. The governor applied to the council, to consider of means to restore the city to order—the council in reply alledged that the disorders had been occasioned by the violent and unprecedented manner in which the sloop Liberty had been seized by the king's officers—and the inhabitants in a public declaration, supported by ample testimony on oath, justified themselves upon the insolent conduct of the commissioners and their under officers; they stated moreover that the king's ship the Romney, frightened the coasting vessels from bringing provisions and fuel to the city, and petitioned the governor to remove her.

Notwithstanding this justification and remonstrance of the people, the legislature in a committee of both houses, declared their abhorence of such proceedings, ordered the rioters to be prosecuted, offered a reward for bringing them to punishment, but at the same time severely censured the circumstances attending the seizure of the Liberty, as being the primary occasion of those riots. Their sincerity in these proceedings has been questioned. It was known that the spirit of animosity against the officers of the customs was too generally diffused, and that there was too great a degree of unanimity, to leave it reasonable to hope, that any person was willing, or if willing, would dare to inform. And what rendered this suspicion more probable was that persons who were known to be most active in those excesses, were nominated grand jurors for the next year. In consequence of this, the suits of the king's officers against Mr. HANCOCK were

abandoned without trial or decision, in despair of succeeding in them.

Things had now gone so far, that the executive began to think that force alone could restore the city to order and peace, or its inhabitants to obedience to the laws—and this idea generated another measure which still farther inflamed the temper of the people. Some time before, it had been in contemplation to station a regiment for the protection of the custom house officers, in executing their duty—but in consequence of the riots about the sloop Liberty, the force detached for the purpose was doubled, and two regiments instead of one, were sent by general GAGE to Boston. The ministers of England imagined, that by dissolving the assembly they would disengage themselves from the effects of combination among the people, who having no common raling point to which to resort for a communication of opinions and unity of measures, they supposed would gradually relax in their opposition, and at last submit to the taxes; while a military force would keep them in continual remembrance of the dangers of resistance, and awe them into compliance. But in this, as in every other design, they betrayed the shortness of their sight and their utter incapacity to effect their own purposes. They knew very little indeed of the nature of the people, over whom they presumed to tyrannize; they would else have understood that the opinions of the assembly which they had dissolved, were the opinions of the whole country, and that the people were so unalterably firm in their determination, that though the wisdom of their representatives in assembly might modify, it could not controul or shake it. The very means which had been used to subdue the spirit of opposition inflamed it to the highest degree of enthusiasm. The current stopt in one channel was sure to find its way through another, and wanting their house of representatives, as an organ of their opinions, they chose another. A meeting of the inhabitants was held, who appointed a committee to wait upon the governor, and pray him to call another general

assembly, to which he answered that it could not be done, without the king's orders. The meeting thereupon came to several spirited resolutions, viz. "That to levy any money within the province by any other authority than that of the general court was a violation of the royal charter, and of the natural rights of British subjects." "That the people of Boston would, at the peril of their lives and fortunes, take all legal and constitutional measures to defend all and singular the rights, liberties, privileges and immunities granted in their royal charter." "That as there was an apprehension in the minds of many, of an approaching war with France, those inhabitants who were not provided with arms, should be requested duly to observe the laws of the province, which required that every house-holder should furnish himself with a complete stand. "That as the governor did not think proper to call a general court for the redress of their grievances, the town would then make choice of a suitable number of persons to act for them as a committee, in a convention to be held at Faneuil-Hall in Boston, with such as might be sent to join them from the several towns in the province."

Having agreed to these resolves, they without loss of time dispatched them through the medium of a circular letter, to all the other towns in Massachusetts, by whom they were universally received with respect, and as universally concurred with. According to the requisition contained in the resolves, there met in convention at Faneuil Hall, deputies from ninety six towns, and eight districts, and notwithstanding the irritation of mind which prevailed in Boston, so little of it tainted the other members of the convention, that their proceedings were marked by considerable moderation. They professed to assemble together, only to consult and advise on such measures as might tend to promote the peace and good order of his majesty's subjects in the province; not to pass any acts of government, and they even disclaimed all pretensions to authority to do so. They advised the people to pay the

utmost deference to government, and to wait patiently for a redress of their grievances, from his majesty's wisdom and moderation. They petitioned the governor to assemble the general court—and instructed their provincial agent in London, to represent to government the character in which they met and the purposes they had in view, and to explain the causes and motives which induced them to meet in convention. Then stating the same to the world, together with an account of their proceedings, they dissolved the convention and returned home.

CHAPTER XXI.

HISTORY OF THE PASSING TIMES.

CONGRESS.

JUDGE CHASE'S IMPEACHMENT.

[Continued from page 264.]

It would be injurious to the cause, and unfair to the counsel for judge Chase, to omit a passage in the defence respecting the duty and character of a judge, "Would you wish your judges (said Mr. Luther Martin) instead of acting upon principle, to court only the applause of their auditors? Would you wish them to be what sir Michael Foster has so correctly stated, the most contemptible of all characters, popular judges—judges who look forward in all their decisions, not for the applause of the wise and the good, of their own consciences, or of their God; but of the rabble or any prevailing party. We boast of our government, as being a government of *laws*. But how can it be such unless the laws are sacredly and impartially, without regard to popularity,

carried into execution. Give me the judge who will firmly, nay even sternly perform his duty equally uninfluenced, equally unintimidated by the "*instantis vultas tyranni*," or the "*ardor civium prava Jubentium.*" Our property, our liberty, our lives, can only be protected by such judges. With this honourable court it remains whether we shall have such judges."

Adverting to that part of the 4th article, which charged judge Chase with betraying an indecent solicitude for the conviction of the accused, *unbecoming even a public prosecutor*, Mr. Martin expressed his concern that such useful officers as public prosecutors should be held by the house of representatives in so very incorrect a point of view. The *public prosecutor*, he said, was as much the protector of innocence, as the avenger of guilt. His duties were as clearly marked as those of a judge. They had both one common object in view, though acting in different characters—both were equally bound to shield the innocent and punish the guilty.

The 5th, 6th and 7th articles of the charge being matters of mere legal discussion, come not within the scope of the plan we have laid down. We therefore proceed to the defence on the 8th article.

The respondent's counsel began the defence by controverting the testimony of the chief witness in support of the charge—Mr. Montgomery. That witness had attributed to judge Chase, expressions which he never used. The counsel contended, that according to the custom of the country, established and uncensured for thirty years, the judge had a right to warn his fellow citizens in a charge from the bench, against the political dangers with which he believed them to be threatened, and to that end to point out what he considered pernicious in certain measures of government—this the judge did—and this he had a right to do—but he did not claim, nor had he exercised the privilege of abusing those who had been appointed to administer the government of

the country, not of making strictures on their character, motives or general conduct. On the contrary, however the judge might differ from them in political opinion, he had always inculcated obedience to them in the exercise of their constitutional powers. When he could not approve of their measures he was silent, except in a single instance, where in order to dissuade the people of Maryland from the adoption of a constitutional amendment then under consideration, which he conceived to be mischievous, he had adverted to the consequences which he thought likely to flow from it.

The expressions "that the present administration was weak, incapable, and unequal to the proper discharge of their duties, and that the object of their measures was not to promote the public good, but to preserve unfairly acquired power," had they been uttered by judge Chase from the bench, would indeed, his counsel said, be highly reprehensible. But the charge stood upon the evidence of one witness alone—Mr. Montgomery of Maryland. His testimony therefore was to be examined. And first as to the state of that witness's mind. He himself had deposed that he was the author, and chief supporter of those measures against which the respondent had inveighed—that he considered himself particularly pointed at by the judge, and supposed the eyes of the audience to be turned upon him. So greatly had he been enraged at this supposed attack, that as he left the room after the charge was finished, he declared the judge should be impeached for it. This was proved by Mr. M'Mecker. The witness then wrote for the press an inflammatory piece, purporting to be the substance of the charge, and avowedly intended to promote the impeachment. It abounded with scurrility, and what was worse, differed very materially from the testimony which the author of it had delivered at the bar. It was not surprising that a man in such a state of mind should misconceive the truth, nor that he should convert the distorted inferences of his heated brain, into facts. As a proof of the little credit which he thought ought

to be attached to the evidence of Mr. Montgomery, the learned counsel referred to the publication of Mr. Montgomery already alluded to, and desired it to be compared with the evidence he had given before the court of impeachment, between which there was so great a difference, that one was a contradiction to the other. What assurance then could the court have, that he whose memory was so treacherous, and who was proved to be so angry, had not stated his own impressions and inferences, as positive matters of fact. But besides this contradiction by himself, his evidence was shook by that of other witnesses—witnesses who were present, cool and attentive. Mr. Mason for one deposed that he recollected nothing of the expressions stated by Mr. Montgomery to have been delivered by judge Chase, though he (Mr. Mason) had given with the utmost confidence and accuracy the principal points of the charge. Mr. Mason was one of the strongest adherents and most zealous friends, indeed one of the chief props of the present administration, and was united with it in interest and affection. Could it then be believed that so outrageous an attack upon his friends, as that laid to the charge of judge Chase, could have escaped his notice, or been effaced from his memory. Besides Mr. Mason, there was Mr. Smith, editor of the National Intelligencer, than whom the present administration has not a more zealous friend. He was no less remarkable for the devotedness of his attachment to administration, and his lively and keen sensibility to all its wrongs, real or imaginary than for his talent of stating in writing, from professional habits, whatever he had heard spoken or read. He had listened attentively to the charge, and had the same evening committed it to writing, for the express purpose of publishing it in his paper. That publication he had produced in court and attested, and it contained no such expressions as were stated by Mr. Montgomery to have been heard by him. Was it possible to believe, (the learned counsel asked,) that if such expressions had been used, Mr. Smith would have

omitted them. Mr. Stephen too, a person strongly attached to the present administration had attended to the charge, but heard no such expressions. A multitude of other witnesses who stood round the judge while he delivered his charge, and who for various reasons were attentive to it, had with one voice, declared that they had heard no such expressions. Among them was the district judge, who sat by the side of judge Chase—the clerk of the court who sat next but one to him, and who was moreover an adherent of the present administration—the foreman of the grand jury, who stood close to the respondent, and to whom the charge was particularly addressed—and one of the judges of the district who attended as a witness and stood very near to judge Chase—other gentlemen, too—men of the bar who delivered their testimony with great accuracy, and assigned the reasons of their belief—all those declared most positively, that they heard no such expressions delivered by judge Chase as had been related by Mr. Montgomery. For these reasons the respondent's counsel said, that though they acquitted Mr. Montgomery of wilfully mistating the fact, they relied upon it as an evident truth that he had mistaken it, in the irritation of his mind at the transaction.

There was another point on which some contrariety appeared in the testimony. Some of the witnesses had said that judge Chase concluded the charge with a direct recommendation to the jury to use their endeavours to prevent the passing of the act for abolishing the supreme courts, by procuring the election of persons who would vote against it—others said that no such recommendation was expressly made—but was only to be inferred from the general tenor of the charge. The difference was immaterial. The object of the charge was to dissuade the people from adopting the measure; and the recommendation, though not expressly given was plainly implied. His counsel avowed that this was the judge's intention—and his defence rested upon his right to pursue the object in that way. It was evident that

his object was by arguments drawn from reason and experience to shew the danger of abolishing the supreme courts of law—of destroying the independent tenure of judicial office, secured by the existing constitution—of leaving judges dependent on the executive for continuance in office, and on the legislature for their support—and of introducing a judiciary system entirely new and untried. Judge Chase who had contributed largely to the formation and establishment of the constitution, was greatly alarmed at such changes. He considered them as of the most destructive tendency to the liberty and happiness of his country, and he resolved to take that occasion of warning his fellow citizens against them. The whole scope of the address to the grand jury, was to shew the importance of an independent judiciary, and the mischiefs of the intended change, and to warn them that the spirit of innovation which had gone abroad ought to be carefully watched.

And was not this (exclaimed the learned counsel, Mr. Harper) an object which a citizen of this country might lawfully pursue? Is it not lawful for an aged patriot of the revolution, to warn his fellow citizens of dangers, by which he supposes their liberties and happiness to be threatened? Or will it be contended that a citizen is deprived of these rights because he is a judge? That his office takes from him the liberty of speech, which belongs to every citizen, and is justly considered as one of our most invaluable privileges? I trust not. And if there can be any doubt on this point, I will remove it by referring to a recent instance of two judges of the supreme court of Maryland, who in a late political contest, entered the lists as champions for the rival candidates, and travelled over a whole county, making political speeches in opposition to each other. Yet these gentlemen justly possess the confidence and respect of the public; their conduct in this instance has never been considered as a violation of duty; and he who espoused the interests of the successful candidate, has been far from receiv-

ing any marks of displeasure, from the government of this country.

If therefore a judge retain this right, notwithstanding his official character; if it still be lawful for him to express his opinion of public measures, to oppose by argument such as are still pending, and to exert himself for obtaining the repeal, by constitutional means, of such as have been adopted; I ask what law forbids him, to exercise those rights by a charge from the bench? In what part of our laws or constitution is it written, that a judge shall not speak on politics to a grand jury? None.

What is the peculiar and distinguishing characteristic of despotism? It consists in this, sir; that a man may be punished for an act, which when he did it was not forbidden by law. While, on the other hand, it is the essence of freedom, that no act can be treated as a crime, unless there were a precise law forbidding it, at the time when it was done.

It is this line which separates liberty from slavery: And if the respondent be condemned to punishment for an act, which far from being forbidden by any law of the land, is sanctioned by the custom of the country, for more than twenty years past, then have we the form of free government but the substance of despotism.

I have stated, Mr. President, that the practice of introducing political matter into charges to grand juries, has been sanctioned by the custom of this country, from the beginning of the revolution to this day. Need I advance any other proof of the fact, than its general notoriety? Need I refer to the charge delivered in South Carolina, in 1796, by William Henry Drayton, for which he has been so much admired and applauded? Need I refer to the recommendation of the executive council of Pennsylvania, at a period something later, in which that body, with John Dickinson at its head, enjoins it on the judges, to avail themselves of their charges to the grand juries on their circuits, for disseminating correct political information and principles, among the people? Shall I refer to the case of judge Addison in Pennsylvania, who

has delivered many political charges; and against whom, when he was lately impeached, those charges made no part of the accusation? Shall I refer again to the charge of judge Iredell, delivered to the grand jury which found the first indictment against John Fries, and containing a variety of political matter? It is unnecessary to dilate on these instances. They have been given in evidence, and are fresh in the memory of this honorable court. The recollection of the honorable members must furnish them with many others equally striking.

And yet have the authors of none of these political charges been censured. No mark of public or private disapprobation has been fixed in their conduct. No legislative act has forbidden this practice. From the time of judge Drayton to the time of judge Chase, it has been considered as innocent. It remained for the year 1803, after a lapse of twenty-seven years, to discover its criminality. But this honorable body will not so determine. It will not forget the distinction, between its judicial and its legislative character. In its judicial character it will declare that an act, however improper in itself or dangerous in its tendency, shall not, if forbidden by no law, be punished as a crime; that the prevalence of this custom for twenty-seven years, the countenance which it received from some governmental authorities, and the acquiescence of all, are sufficient evidence of its legality; and that the criminal intent which constitutes an essential ingredient of the offence, in this as in every other case, and of which no direct proof is now adduced, can never be inferred from the act itself, when done in compliance with a custom so long established, and so highly sanctioned. But if the members of this tribunal should be individually of opinion, that this custom is dangerous or improper, they will, after pronouncing a sentence of acquittal in this case, resume their legislative character, and pass a law to restrain the practice in future. Thus will the mischief be prevented on one hand, and the principles of liberty and justice respected on the other.

[*Here the defence was closed.*]